

SOUTHERN ENVIRONMENTAL LAW CENTER

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January 4, 2019

VIA U.S. MAIL

Regional Freedom of Information Officer
U.S. EPA, Region 4
AFC Bldg, 61 Forsyth Street, SW, 9th Flr (4PM/IF)
Atlanta, GA 30303-8960

Re: Freedom of Information Act Request: Records Regarding Ephemeral and Intermittent Streams

Dear Sir or Madam,

Under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as amended, the Southern Environmental Law Center (SELC) requests any documents, including photographs, that relate to concluded enforcement actions (that concluded in the last five years) that involved the discharge of dredged or fill material to the following: 1) an intermittent stream 2) an ephemeral stream, and/or a wetland with an ephemeral or intermittent connection to a downstream traditional navigable water.

In short, we are seeking examples in which EPA would not be able to pursue enforcement actions if the definition of waters of the United States were finalized that did not protect the waters listed above. We anticipate that there are examples in the southeast where, for example, developers have bulldozed ephemeral and intermittent streams or geographically isolated wetlands without first securing a permit and EPA has taken an enforcement action.

For the purposes of this request, the term “documents” includes all written, printed, recorded or electronic: materials, communications, correspondence, memoranda, notations, copies, diagrams, charts, maps, photographs, tables, spreadsheets, formulas, directives, observations, impressions, contracts, letters, messages and mail in the possession or control of the Corps.

FOIA directs a responding agency to make a “determination” on any request within twenty (20) working days of receipt. *See* 5 U.S.C. § 552(a)(6)(A)(i). FOIA also requires the release of all reasonably segregable portions of a document that are themselves not exempt. 5 U.S.C. § 552(b). Should our requests be denied, we request that you inform us of the grounds for denial and the specific administrative appeal rights which are available. *See* 5 U.S.C. § 552(a)(6)(A)(i).

SELC is requesting photocopies without charge, or at a reduced charge, because reduction or waiver of fees would be in the public interest. A disclosure is in the public interest if (1) it is likely to contribute significantly to public understanding of the operations or activities of the government, and (2) it is not primarily in the commercial interest of the requester. The public interest standard of the fee waiver provision of the FOIA should be “liberally construed”

in favor of waivers. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987); *Pederson v. Resolution Trust Corp.*, 847 F. Supp. 851, 855 (D.Colo.1994); *Etlinger v. FBI*, 596 F. Supp 867, 872 (D. Mass. 1984). The goal of the statute is to avoid the “roadblocks and technicalities which have been used by various Federal agencies to deny waivers....” *Pederson*, 847 F. Supp. at 855.

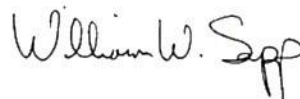
SELC is a 501(c)(3) non-profit organization with over 25 years of experience disseminating public information regarding Corps regulatory and operations issues. See 5 U.S.C. § 552 (a)(4)(A)(iii). SELC maintains a website that includes both general and topic-specific information regarding the matters with which SELC is involved. Lawyers at SELC are interviewed by the media to explain their work and its significance. SELC’s website contains documents generated by SELC for the specific purpose of educating the public on particular issues. SELC also speaks at conferences on particular topics. SELC also assists the public in locating information relating to a particular topic by collecting and posting relevant information, documents, and links to other websites.

A fee waiver clearly will benefit the general public through increased notice and understanding of the operations of the government and of potential or proposed major policy incentives. SELC further certifies that disclosure of the information sought is not in our commercial interest.

Should SELC’s request for reduced or waived fees be denied, SELC is prepared to bear the reasonable duplication and search costs necessary to fulfill this request. However, I request you contact me before processing this request if the fee is expected to be in excess of \$100.00. SELC reserves its right to appeal a fee waiver or reduction denial.

If you have any questions regarding this request, please feel free to contact me at 404-521-9900 or syoung@selcga.org. I appreciate your prompt attention to this matter and look forward to receiving the public records requested.

Sincerely,

A handwritten signature in black ink that reads "William W. Sapp". The signature is written in a cursive, slightly stylized font.

William Sapp
Senior Attorney